

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

COPY

In the Matters of)

JAMES A. KAY, JR.)

Licensee of One Hundred Fifty Two Part 90)
Licenses in the Los Angeles, California Area)

MARC SOBEL AND MARC SOBEL)
D/B/A AIR WAVE COMMUNICATIONS)

Licensee of Certain Part 90 Licenses)
in the Los Angeles, California Area)

DOCKET FILE COPY ORIGINAL

WT Docket No. 94-147

WT Docket No. 97-56

RECEIVED
AUG - 3 2005

Federal Communications Commission
Office of Secretary

MOTION TO MODIFY SANCTION

Robert J. Keller
Counsel for James A. Kay, Jr., and
Marc Sobel d/b/a Air Wave Communications

Law Offices of Robert J. Keller, P.C.
PO Box 33428 - Farragut Station
Washington, D.C. 20033-0428
202-223-2100

Aaron P. Shainis
Counsel for James A. Kay, Jr.

Shainis and Peltzman, Chartered
1850 M Street, N.W. - Suite 240
Washington, D.C. 20036-5803
202-293-0011

Dated: August 3, 2005

No. of Copies rec'd
List ABCDE

0

SUMMARY

James A. Kay, Jr. and Marc D. Sobel (collectively, "Petitioners") hereby move for a modification of the partial revocation sanction imposed in WT Docket Nos. 94-147 and 97-56. They seek, lieu of the revocation of their 800 MHz licenses, a modified sanction package consisting of: (a) the contribution by Petitioners (free of any compensation) of a block of clear UHF (470-5172 MHz) channels for use by public safety entities in the Los Angeles area; and (b) a monetary forfeiture in the aggregate amount of \$150,000, plus an additional voluntary contribution of a substantial amount the U.S. treasury.

The proposed alternative secures for immediate public safety use a block of additional spectrum in what is perhaps the most highly congested and spectrum starved market in the country. By contrast, the current sanction revoking Petitioners' 800 MHz licenses does not increase public safety spectrum availability. Improving the capabilities of public safety communications is always a priority, and it is even more so in the post 9/11 environment, given heavy reliance on public safety mobile radio communications by first responders.

Significantly, Petitioners were not disqualified as licensees; rather, the Commission ordered a partial revocation of only some of their licenses as a deterrent to future misconduct. The loss of valuable UHF spectrum together with a substantial monetary payment will provide an adequate deterrent against any future misconduct. The Commission would still be taking licenses away from Petitioners, but in a manner that will have an added and substantial public interest benefit.

The immediate request is simply that the Commission direct negotiations looking toward a modified sanction package. Unless a satisfactory agreement can be reached in timely fashion, the existing sanction will remain in effect. Thus, the Commission has nothing to lose by granting this motion. But the Commission—and the public interest—have much to gain.

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
I. INTRODUCTION AND SUMMARY	1
II. OVERVIEW OF PROPOSAL	3
A. Replacement of License Revocation Sanction	3
B. Proposed Alternative Sanction Package	7
1. Contribution of Spectrum to Public Safety Use	7
2. Monetary Payment	8
C. Suggested Negotiation Procedures	9
III. PUBLIC SAFETY BENEFITS OF PROPOSAL	11
A. Net Gain for Los Angeles Public Safety	11
B. Public Safety Spectrum Shortage in the Los Angeles Area	12
C. Public Safety Need for UHF Spectrum in the Los Angeles Area	15
IV. CONCLUSION	19

APPENDICIES

Appendix No. 1: Kay & Sobel 800 MHz Channels Subject to Revocation

Appendix No. 2: Kay & Sobel UHF (IG, IK, YG, YK) Licenses

Appendix No. 3: Active UHF Public Safety (PW & YW) Service Licenses -
Los Angeles / So. Calif. Area

Appendix No. 4: Active UHF Public Safety (PW & YW) Service Application
Records - Los Angeles / Southern California Area

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matters of)	
)	
JAMES A. KAY, JR.)	WT Docket No. 94-147
)	
Licensee of One Hundred Fifty Two Part 90)	
Licenses in the Los Angeles, California Area)	
)	
MARC SOBEL AND MARC SOBEL)	WT Docket No. 97-56
D/B/A AIR WAVE COMMUNICATIONS)	
)	
Licensee of Certain Part 90 Licenses)	
in the Los Angeles, California Area)	

MOTION TO MODIFY SANCTION

James A. Kay, Jr. ("Kay") and Marc D. Sobel ("Sobel") (jointly, "Petitioners"), by their attorneys and pursuant to 47 C.F.R. § 1.141 (2004), hereby respectfully move the Commission to modify the partial revocation sanction imposed in the above-captioned hearing proceedings, in support whereof, the following is respectfully shown:

I. INTRODUCTION AND SUMMARY

Two independent license revocation proceedings, one involving Kay¹ and the other involving Sobel,² were heard by two separate administrative law judges who reached diametrically opposite results on the same issues, involving the same parties, and based on

¹ *James A. Kay, Jr.*, WT Docket No. 94-147: *Order to Show Cause, Hearing Designation Order, Notice of Opportunity for Hearing for Forfeiture*, 10 FCC Rcd 2062 (1994); *Order*, 11 FCC Rcd 5324 (1996) (modifying hearing designation order); *Summary Decision of Administrative Law Judge Richard L. Sippel*, 11 FCC Rcd 6585 (ALJ 1996); *Memorandum Opinion and Order*, 12 FCC Rcd 2898 (1997) (reversing summary decision); *Memorandum Opinion and Order*, 13 FCC Rcd 16369 (1998) (denying pre-trial request extraordinary relief); *Order*, 13 FCC Rcd 23780 (1998) (removing ALJ Sippel as presiding officer); *Initial Decision of Chief Administrative Law Judge Joseph Chachkin*, 1999 FCC Lexis 4387 (ALJ 1999) (resolving all issues in Kay's favor); *Decision*, 17 FCC Rcd 1834 (2002) (reversing initial decision in part); *Memorandum Opinion and Order* (2002) (denying reconsideration).

² *Marc Sobel and Marc Sobel d/b/a Air Wave Communications*, WT Docket No. 97-56: *Order to Show Cause, Hearing Designation Order, Notice of Opportunity for Hearing for Forfeiture*, 12 FCC Rcd 3298 (1997); *Initial Decision of Administrative Law John M. Frysiak*, 12 FCC Rcd 22879 (1999) (resolving all issues against Sobel); *Decision*, 17 FCC Rcd 1834 (2002) (affirming initial decision in part); *Memorandum Opinion and Order*, 17 FCC Rcd 8562 (2002) (denying reconsideration); *Memorandum Opinion and Order*, 19 FCC Rcd 801 (1994) (denying further reconsideration).

identical operative facts. On review, in a 4-to-1 decision (Commissioner Martin dissenting), the Commission held that a management arrangement between Kay and Sobel constituted an unauthorized transfer of control of Sobel's 800 MHz stations, and that Kay and Sobel had exhibited a lack of candor with the Commission regarding the matter.³ The Commission further concluded, however, that the misconduct was not sufficient to warrant total disqualification or revocation of all Petitioners' licenses. The Commission revoked only the 800 MHz licenses then held by Petitioners,⁴ as a deterrent against future misconduct. The effective date of the license revocations has been stayed pending final action on all appeals.⁵

Kay and Sobel hereby seek an alternative resolution that will better serve the public interest. Specifically, Petitioners ask the Commission to rescind the license revocations, substituting for them a modified sanction package consisting of: (a) the contribution of a block of spectrum to one or more public safety entities in the Los Angeles area, and (b) a substantially increased monetary payment.

While the specific details (e.g., amount of money paid, number of channels contributed, etc.) and other terms and conditions can be negotiated with Commission staff, subject to final approval by the Commission, it is apparent that a modified sanction can be fashioned along these lines that would preserve the regulatory objective of standing as a deterrent to future misconduct, while better serving the public interest by mitigating a severe spectrum shortage for public safety in the Los Angeles area.

³ Petitioners dispute this conclusion and are pursuing appropriate avenues of judicial review. The Court of Appeals affirmed the Commission actions in a consolidated appeal. *Kay v. FCC*, 396 F.3d 1188 (D.C. Cir. 2005). On July 5, 2005, Kay and Sobel jointly filed a petition for writ of certiorari with the United States Supreme Court (Case No. 05-46). For purposes of this motion, however, Petitioners do not challenge the judgment on the merits, but merely seek an alternative sanction.

⁴ Appendix No. 1 hereto is a listing of the channels subject to revocation pursuant to the orders in WT Docket Nos. 94-147 & 97-56. Appendix No. 2 is a listing of the UHF channels licensed to Petitioners and/or affiliated entities. The UHF licenses are not subject to the revocation order.

⁵ WT Docket No. 94-147, *Decision*, 17 FCC Rcd at 1866, ¶109; WT Docket No. 97-56, *Decision*, 17 FCC Rcd at 1895, ¶90.

II. OVERVIEW OF PROPOSAL

By letter from their legal counsel dated April 27, 2005, addressed and delivered to each Commissioner, Petitioners “propose[d] an agreement between them and the Commission whereby the sanctions imposed [i.e., license revocation] would be modified.” After several meetings between Petitioner’s representatives and the Commissioners and Commission staff, and based on the various questions, comments, suggestions, and concerns voiced in those meetings, Petitioners offer this modified proposal.⁶ The essence of the proposal is that Petitioners would surrender a portion of their spectrum holdings, albeit by contributing the spectrum to public safety use rather than by revocation, and would also make a substantial monetary payment to the federal government. Petitioners hereby ask the Commission to appoint a panel of its staff members and direct them to negotiate an appropriate agreement along these lines for consideration and approval by the Commission.

A. Replacement of License Revocation Sanction

Some Enforcement Bureau representatives have expressed concern about any agreement that would disturb the license revocations ordered by the Commission in these cases. The sentiment expressed is that it would be improper for Petitioners to “get out from under” the sanctions imposed by the Commission, or to have those sanctions lessened in any way. This is a legitimate and serious question, worthy of careful consideration. It may therefore be helpful to examine some of the applicable legal and regulatory issues before discussing the details of the modified proposal.

Although the Commission ordered a revocation of certain licenses, it did not revoke all of Petitioners’ authorizations or disqualify them as licensees. Indeed, notwithstanding the partial revocation order, and regardless of the final outcome of the judicial appeals, Petitioners retain all

⁶ This petition supersedes and replaces the April 27, 2005, letter.

of their non-800 MHz licenses and indeed are free to apply for new 800 MHz licenses. The Commission therefore opted for the partial license revocation sanction *as a matter of discretion*, not legal necessity. Having decided not to disqualify Petitioners, the Commission could just as well have chosen a purely monetary sanction rather than license revocation.⁷ Having made a discretionary decision to revoke only some of the licenses of otherwise qualified licensees in lieu of other possible sanctions, the Commission certainly retains the discretion to modify that sanction, particularly if it appears, as here, that a greater public interest benefit can be thereby achieved.

License revocation is not intended to be punitive in nature. *Charles A. Stevens, Sr.*, 75 FCC Rcd 294 at P.7 (Rev. Bd. 1979) (“[R]evocation of a license is not a punishment.”); *Robert P. Miller*, 71 FCC 2d 1291 (“[R]evocation of a station license and suspension of an operator’s license are not penalties. They are remedial administrative actions, the purpose of which is not to penalize but rather to assure the integrity of the Commission’s licensing program.”). The purpose of examining character qualifications issues in licensing proceedings is not backward-looking, seeking to extract a penalty for bad behavior; rather, it is forward-looking, attempting to assess the reliability of an applicant’s or licensee’s future performance:

[L]icensing “enables future conduct.” ... [E]valuations [of character qualifications] should be narrowly focused on specific traits which are predictive of the applicant’s propensity to deal honestly with the Commission and comply with the Communications Act or the Commission’s rules and policies.

⁷ The Commission expressly states that just such an either-or consideration was at play in the Sobel case: “In light of these sanctions [i.e., the partial revocation of 800 MHz licenses], we find it unnecessary to impose a forfeiture against Sobel.” WT Docket No. 97-56, *Decision*, 17 FCC Rcd at 1894, ¶80. While the Commission assessed a \$10,000 monetary forfeiture against Kay, that was for a 308(b) violation, not the candor issue. WT Docket No. 94-147, *Decision*, 17 FCC Rcd at 1864-1864, ¶100. Moreover, the Commission viewed the partial license revocation as, at least partially, a surrogate for a monetary sanction on Kay insofar as one of its considerations was “the value of these stations,” *id.* at 1865, ¶101.

Policy Regarding Character Qualifications in Broadcast Licensing,⁸ 102 FCC 2d 1179, 1189 (1986) (hereinafter, “*Character Qualifications Policy Statement*”), quoting *Westinghouse Broadcasting Co.*, 44 FCC 2d 2778, 2783 (1962). The Commission’s objective is neither to pass moral prejudgment on applicants nor to punish existing licensees. Rather, “the Commission’s constant goal should be to ensure licensee reliability.” 102 FCC 2d at 1226. The ultimate determination is “whether ... regardless of serious misconduct ... [the applicant or licensee] is capable of being trusted to operate its station in the public interest and that the likelihood of future misconduct is non-existent.” *Id.*

As the Commission has further explained:

[D]eterrence is an important element of the character qualifications process, as it helps to ensure future reliability and truthfulness. ... Sanctions imposed may deter future misconduct of the applicant in question and of others observing our actions. ... [A] range of sanctions short of revocation or failure to renew a license can be imposed by the Commission. Suffering the loss of one station, with the costs thereby imposed, will likely serve to deter all but the most unrepentant from serious future misconduct. *Only in the most egregious case need termination of all rights be considered.*

102 FCC 2d at 1228 (emphasis added). The Commission clearly did not find this to “the most egregious case” and therefore stopped far short of the “termination of all rights.” Having affirmatively determined that Kay and Sobel were not disqualified, the Commission fashioned a partial revocation sanction, not as a punishment, but rather as a deterrent to future misconduct by Petitioners or by others. WT Docket No. 94-146, *Decision*, 17 FCC Rcd at 1865, ¶101; WT Docket No. 97-56, *Decision*, 17 FCC Rcd at 1894, ¶80.

The acid test for any modified sanction, therefore, is not whether it lessens the “punishment” to Petitioners, but rather whether it is sufficient to deter Petitioners and others

⁸ Although originally promulgated in the context of broadcast licensing, the *Character Qualifications Policy Statement* is applied in evaluating the character qualifications of non-broadcast wireless licensees as well. *E.g.*, *A.S.D. Answer Service, Inc.*, 1 FCC Rcd 421, 424 (1986); *Western Telecommunications, Inc.*, 3 FCC Rcd 6405 (1988); *NYNEX Corporation*, 12 FCC Rcd 19985, 20092 (1997); *Mercury PCS II, LLC*, 12 FCC Rcd 18093 (WTB 1997), *aff’d* 15 FCC Rcd 9654 (2000); *Kevin David Mitnick*, 17 FCC Rcd 27028 (2002); *AT&T Wireless Services, Inc.*, 19 FCC Rcd 21522 (2004).

from future misconduct. Under this proposal, Petitioners will still be losing licenses, and this will have a substantial adverse impact on them. Petitioners have information that the fair market value for clear 470-512 MHz spectrum in the Los Angeles area may be as high as \$500,000 per channel, possibly more in some cases. Accordingly, the surrender of a number of UHF channels, together with the monetary payment, adds up to a very substantial sanction, and one that certainly would deter against any future misconduct.

Certain Commissioners and their advisors have asked whether there is any precedent for the type of resolution sought by Petitioners. Petitioners point to the historic use of the "distress sale" policy, permitting a licensee who has been designated for a revocation or renewal proceeding to avoid adjudication of basic qualifying issues by selling its licenses, at a discounted price, to a minority controlled entity, notwithstanding the Commission's general rubric that outstanding questions of a licensee's basic qualifications bars the assignment or transfer of an authorization. *Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, 92 FCC 2d 849 (1982); *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 (1978); *Martin W. Hoffman*, 15 F.C.C. Rcd 22086 (2000). The Commission makes this exception, recognizing that there is a greater public interest goal, e.g., facilitating greater diversity in broadcast media ownership.⁹

By analogy, if the Commission permits a licensee to sell its station, albeit at a discounted price, thereby avoiding adjudication of its basic qualifications, in furtherance of the public interest in diversity, it certainly has the authority and discretion to permit licensees who have been determined, after full adjudication, *not* to be disqualified, to contribute licenses for public safety use rather than simply having licenses revoked.

⁹ A similar exception is often allowed where the licensee is in bankruptcy and the assignment would benefit innocent creditors. *Second Thursday Corp.*, 22 FCC 2d 515, on recon., 25 FCC 2d 112 (1970).

B. Proposed Alternative Sanction Package

Petitioners propose an alternative sanction package consisting of two parts: (a) the contribution of UHF spectrum for public safety use in the Los Angeles area, and (b) a substantial monetary payment to the federal government.

1. Contribution of Spectrum to Public Safety Use

Petitioners are prepared to voluntarily contribute a block of spectrum in the 470-512 MHz portion of the UHF band¹⁰ for use by or for the exclusive benefit of one or more public safety entities in the Los Angeles area. Procedurally, the contribution of spectrum can be done in one of two ways: (a) a full or partial license assignment, or (b) a short spacing consent coupled with a subsequent license cancellation. Where the technical parameters of an existing Kay or Sobel authorization satisfies the requirements of the public safety entity, an application for Commission consent to the assignment of that authorization would be filed. Where the public safety entity's requirements exceeded the authorized parameters, Kay or Sobel could grant a "short spacing consent," thereby permitting the public safety entity to apply for a new authorization, after the grant of which the existing Kay or Sobel license would be canceled. Thus, the spectrum contribution can be accomplished through the use of existing procedures commonly used by land mobile radio service licensees and the Commission.

Another model would be the contribution of a block of Petitioners' UHF channels for the establishment of a mutual aid network providing communications capabilities with full interoperability to various different public safety entities throughout the Los Angeles area.¹¹ The channels could be licensed to a consortium of public safety entities, a public safety umbrella

¹⁰ Channels are allocated to public safety use on a nationwide basis from the 450-470 MHz band segment. 47 C.F.R. § 90.20(c). In eleven major markets, including Los Angeles, channels are allocated to public safety from the 470-512 MHz portion of the UHF band. 47 C.F.R. § 90.311(a). Appendix No. 2 hereto is a listing of the UHF channels licensed to Petitioners and/or affiliated entities.

¹¹ Assuming the concerns relative to the Miscellaneous Receipts Act can be satisfied, see Section II.B, above, the monetary portion of the alternative sanction could be used to offset the infrastructure costs of such a system.

organization, or even to an equipment vendor (e.g., Motorola, M/A-COM, E.F. Johnson, etc.) which would manage system operations. The spectrum in the 470-512 MHz portion of the UHF band is ideal for this application owing to the possibility of exclusivity,¹² since Petitioners have exclusivity on a number of channels in the Los Angeles area.¹³

2. Monetary Payment

Under the present ruling, Sobel is not liable for any monetary penalty, and Kay is liable for a \$10,000 forfeiture. Petitioners now propose to make a substantial monetary contribution, in addition to Kay's \$10,000 forfeiture. Petitioners suggest monetary forfeitures in the aggregate amount of \$150,000,¹⁴ coupled with voluntary contributions to the United States in the aggregate amount of \$600,000 in partial reimbursement of the government's costs in prosecuting and litigating this matter over the past ten years.

This is a departure from the monetary proposal described in the April 27, 2005 letter to the Commissioners, wherein Petitioners suggested the establishment of a fund "for the purpose of furthering the participation in telecommunications and related industries by minorities, women, and any underprivileged and disadvantaged persons, ... according to policies to be established by the Commission or a committee appointed by the Commission."¹⁵ Commission staff, including representatives of the Enforcement Bureau and the Office of General Counsel, have raised two possible legal impediments to this approach. First, it may violate the Miscellaneous Receipts Act, Pub L No 97-258, 96 Stat 948 (1982), codified at 31 USC § 3302

¹² Channels below 470 MHz are typically licensed on a shared basis.

¹³ Upon information an belief, Petitioners represent that such channels have a fair market value of as much as \$500,000 per clear channel, and that public safety entities in the Los Angeles area have indeed purchased such channels from non-public safety licensees.

¹⁴ This represents \$75,000 for each of Petitioners, i.e., the statutory maximum forfeiture than may be assessed for misrepresentation by a non-broadcaster, non-common carrier licensee. 47 U.S.C. § 503(b)(2)(C); 47 C.F.R. § 1.80; see also *Forfeiture Policy Statement*, CI Docket No. 95-6, *Report and Order*, 12 FCC Rcd 17087 (1997).

¹⁵ As envisioned by Petitioners, management of the diversity fund would be overseen by one or more trustees appointed by the Commission. Andrew C. Barrett, former FCC Commissioner and a current member of the FCC Diversity Advisory Committee, has agreed to act as a trustee at no charge on a *pro bono publico* basis, subject to Commission approval. Neither Kay, Sobel, nor any person or entity affiliated with them would be involved in the management of the fund, nor would they be the direct or indirect beneficiary of any distributions from the fund.

(1994), which provides that, with limited exceptions, that any person in possession of public moneys shall deposit it in the U.S. Treasury "without deduction for any charge or claim." 31 USC § 3302(b). Second, limiting the beneficiaries of the fund to certain classes may be precluded the Supreme Court decision in *Adarand Constructors v. Peña*, 515 U.S. 200 (1995). The modified proposal avoids these legal concerns by having all monies paid directly into the United States Treasury. Petitioners nonetheless remain open to the diversity fund concept, or any other similar arrangement (e.g., the establishment of a fund earmarked for public safety and first responder communications support), if the legal questions can be resolved¹⁶

C. Suggested Negotiation Procedures

Petitioners submit that working out the specific terms and conditions of the alternative sanction package will be best accomplished by good faith negotiation. For both practical and legal reasons, however, it is not feasible for the Commissioners themselves to participate in such negotiations.¹⁷ Petitioners therefore suggest the following manner of proceeding:

- Designation of a Panel: The Commission would delegate authority to a committee or panel consisting of one representative of each Commissioner's office, as well as one representative from each of the Enforcement Bureau, Wireless Telecommunications Bureau, and Office of General Counsel (hereinafter, the "Committee"). This panel would be directed to negotiate with Petitioners the specific details of an agreement to implement an alternative sanction proposal designed to preserve an adequate deterrence to future misconduct while achieving a significant benefit for public safety communications in the Los Angeles area, such agreement to be jointly submitted to the Commission for final approval.¹⁸

¹⁶ In the April 27 letter Petitioners proposed an aggregate amount of \$2,500,000 for the diversity fund. Under this modified scheme they are suggesting an aggregate amount of \$750,000. The spectrum to be contributed to public safety under the revised proposal will raise the overall monetary value of this proposal to well more than the initially proposed amount. Petitioners are nonetheless willing to negotiate the precise amount of the monetary payment to be made under the alternative sanction proposal.

¹⁷ Even assuming the Commissioners had the time or interest in personally negotiating this matter, it is problematic how that could be accomplished within the confines of the Government in the Sunshine Act, 5 USC § 552(b), and the Commission's Rules on Meeting, 47 C.F.R. §§ 0.601-0.60.

¹⁸ The Commission might also want to consider appointing to this panel a representative of California Public-Safety Radio Association, Inc., the Los Angeles area chapter of the Association of Public-Safety Communications Officials, Int'l, Inc. (i.e., "APCO"). This would help to ensure that the contributed spectrum is put to the most efficient use as quickly as reasonably possible.

- Stay of Revocation: The Commission would stay effectiveness of the revocation orders pending these negotiations. This would extend Petitioners' operating authority under the revoked licenses to the later of: (a) 30 days after final disposition of all judicial appeals, or (b) 30 days after any final Commission order rejecting a proposed sanction modification agreement under this procedure.
- Negotiation Period: The parties (i.e., Petitioners and the Committee) would be given 60 days to negotiate an agreement. This period could be extended for an additional 30 day period by the mutual agreement of all parties. Any further extensions would require Commission approval.
- Submission of Agreement: No later than 10 days after the end of the negotiation period, the parties would submit a joint request to the Commission for approval of the sanction modification agreement. Alternatively, if the parties have not come to an agreement by the end of the negotiation period, Petitioners may within 10 days unilaterally submit a proposed agreement for Commission consideration. Any opposition by the Committee would be filed within 5 days thereafter, and any reply by Petitioners would be filed within 5 days thereafter.
- Commission Ruling: In response to any request (joint or unilateral) for approval of an agreement, the Commission would issue an order either approving the proposed agreement, rejecting it, or approving it subject to modifications. In the case of an approval subject to modifications, Petitioners would have 30 days to either unconditionally accept, otherwise the agreement would be deemed rejected, retroactive to the date of the Commission order.

This procedure offers a significant public interest advantage, i.e., additional spectrum for public safety, while preserving fully the Commission's stated objective that the sanction be an impediment to future misconduct by Petitioners or others. Petitioners have every incentive to negotiate in utmost good faith, for if the parties fail to reach an agreement the Commission can approve, the existing sanction, i.e., the revocation of all the 800 MHz licenses, remains unchanged. The Commission will not disturb that sanction unless it is satisfied that the negotiated alternative will advance and enhance public safety communications in the Los Angeles area and is otherwise in the public interest.

III. PUBLIC SAFETY BENEFITS OF PROPOSAL

As discussed in Section II.A, above, the loss of a significant amount of valuable spectrum plus a substantial monetary payment will be more than adequate to preserve the Commission's goal of deterring future misconduct by Petitioners or others. The principal reason the Commission should substitute the alternative sanction, however, is that it will better serve the public interest by making channels available for public safety communications in what is perhaps the most spectrum-starved region of the country.

A. Net Gain for Los Angeles Public Safety

If the license revocation sanctions become effective as currently ordered, all of Petitioners' 800 MHz licenses subject to the above-captioned proceeding will be terminated. But the Commission will not recover this spectrum, and it will not become available for re-licensing. The vast majority of 800 MHz channels subject to revocation are "encumbrances" on geographic license for 800 MHz SMR service in the Los Angeles area held by Nextel. Under the licensing regulations for geographic licenses, 800 MHz spectrum or area freed up by the license revocations will devolve to Nextel and automatically become part of its geographic license without any Commission action.¹⁹ Petitioners, while losing their 800 MHz licenses, will retain their UHF licenses and will be under no legal obligation to provide them to public safety entities.

Under the Commission's re-banding plan for the 800 MHz band, Nextel will eventually vacate the 800 MHz band. The lower portion of the band, where the vast majority of Petitioners' 800 MHz licenses lie, will be reallocated to exclusive public safety use. Incumbent non-public safety licensees in the lower portion of the band will be relocated to the upper portion of the band

¹⁹ Appendix No. 1 hereto is a listing of the channels subject to revocation pursuant to the orders in WT Docket Nos. 94-147 & 97-56. Fifty two of the Sixty nine channels (i.e., over 75%) will be subsumed within the Nextel geographic license for the Los Angeles area. The remaining seventeen channels are so-called IBLT (Industrial, Business, and Land Transportation) channels that would, upon revocation, immediately become available to virtually any entity eligible in the business radio services on a first-come, first-served, non-auction basis.

where they will be given comparable channels. *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55: *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004); *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004).

Whether or not Petitioners' 800 MHz licenses are revoked, the lower portion of the 800 MHz band will become the exclusive domain of the public safety service. Petitioners will be gone, and public safety entities will still have exclusive access to the *same amount* of 800 MHz spectrum either way. Under Petitioners' alternative sanction proposal, therefore, Los Angeles public safety services would realize a net gain in available spectrum by virtue of the UHF channels contributed by Petitioners.

The Commission has already determined that the revocation of all of Petitioners' licenses is not warranted and that taking only some of them is the appropriate sanction. Under the alternative proposal, Petitioners will still be giving up some, but not all, of their licenses, under a plan that will greatly benefit public safety communications in Los Angeles. This result is indisputably in the public interest.

B. Public Safety Spectrum Shortage in the Los Angeles Area

The public safety radio services²⁰ have always commanded a premier place in the hierarchy of the Commission's various competing policy considerations. The initial section of the Commission's enabling statute, the Communications Act of 1934, obligates the agency to "promote safety of life and property through the use of wire and radio communication." 47 U.S.C. § 151. As the Commission has recognized, this particular regulatory purpose takes on

²⁰ Section 337(f) of the Communications Act defines "public safety services" as those "(A) the sole or principal purpose of which is to protect the safety of life, health, or property;(B) that are provided (i) by State or local government entities; or (ii) by nongovernmental organizations that are authorized by a government entity whose primary mission is the provision of such services; and (C) that are not made commercially available to the public by the provider." 47 U.S.C. § 337(f).

acute importance in a post-9/11 environment in which “[t]he Homeland Security obligations of the Nation’s public safety agencies make it imperative that their communications systems are robust and highly reliable.” *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969 at ¶ 1 (2004).²¹

In the *Report and Plan* in WT Docket No. 96-86, the Commission summarized the extreme importance of adequate provision for public safety communications:

Sufficient mobile communication capacity for agencies charged with protecting the public welfare is of critical importance to the overall well-being of this nation. Every person in the country is dependent, directly or indirectly, on the many services provided by public safety and emergency medical entities. Wireless communication provides a vital component in the nation's public safety and emergency medical infrastructure. Agencies involved in the protection of life and property are able to do their jobs effectively and efficiently only by making extensive use of a wide array of wireless communications options available to them. Full use of these options requires that sufficient spectrum capacity be available and that spectrum use be well planned and coordinated to assure that the diverse needs of public safety entities can be satisfied.

Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, 10 FCC Rcd 5207 at sec. II.A (1995).

Lack of adequate spectrum to meet public safety requirements has been a perennial problem. In 1993 Congress directed the Commission to develop a plan for meeting public safety communications needs through the year 2010. Omnibus Budget Reconciliation Act of 1993 (Budget Act of 1993), Pub. L. No. 103-66, Title VI, § 6002, 107 Stat. 312 (1993), codified as Section 309(j)(10)(B)(iv) of the Communications Act, 47 U.S.C. § 309(j)(10)(B)(iv). In the ensuing *Report and Plan* in WT Docket No. 96-86, the Commission detailed the measures it had previously taken to provide for public safety in the past and catalogued various future measures it would take. Despite its best efforts and careful plans, the Commission realistically acknowledged that there would still be instances of spectrum shortage: “[t]he Commission will

²¹ The importance of public safety communications is also seen in that, unlike the most of the myriad other “radio services” designated by the Commission,

continue to handle critical spectrum shortages on a case-by-case basis. Public safety entities have always had the option to petition the Commission to use, on a local basis, spectrum that is allocated for other services.” 10 FCC Rcd 5207 at sec. IV.D. The Commission recited specific examples of having made such special accommodations in the Los Angeles area, and then stated:

These public safety agencies had to demonstrate in detail why the only solution to their wireless communications problems was to be authorized to use additional spectrum. Any future public safety allocations made to specific geographic areas will likely include minimum spectrum efficiency requirements that could be met, for example, by trunking or other efficiency enhancing technologies. The Commission will expedite review and action in these cases.

Id.

The Commission has long recognized the unique public safety spectrum needs of the Los Angeles area. In the *Report and Order* in GEN Docket 84-902 the Commission acknowledged:

To begin with, the region is densely populated. The geographic area is expansive, with Los Angeles County covering an area of approximately 4000 square miles. The topography is diverse, ranging from seashore to valleys, to deserts, to 11,000-foot mountain peaks. Because of the climate and geologic conditions, the region is prone to natural disasters such as forest wildfires, floods, mud-slides, earthquakes, high winds, high waves and tornados. The County has the highest concentration of automobiles in the world along with a vast network of freeways (totaling more than 500 miles). As a major manufacturing center, the Los Angeles area has experienced industrial disasters, including fires and hazardous chemical spills. These factors, among others, place severe demands on agencies involved with public safety in and around Los Angeles County. Moreover, these factors coupled with the general spectrum congestion present in the Los Angeles basin, place heightened demands on public safety communications systems.

Amendment of Parts 2, 73, and 90 of the Commission's Rules and Regulations to Allocate Additional Channels in the Band 470 - 512 MHz for Public Safety and Other Land Mobile Services, 59 RR 2d 910 ¶ 7 (1986) (footnotes omitted).

C. Public Safety Need for UHF Spectrum in the Los Angeles Area

Petitioners propose to contribute UHF (470-512 MHz) channels for public safety use in the Los Angeles area. This proposal is a good public interest fit because Los Angeles public safety entities have been some of the largest users of UHF spectrum over the decades. Notwithstanding the development and growth of systems in other band, including at 800 and 900 MHz, the strong demand for UHF spectrum by Los Angeles public service entities, particularly Fire and Police, shows no signs of easing.

The Commission has frequently acknowledged and attempted to remedy the high demand for UHF public safety spectrum in the Los Angeles area, by allocating channels from other services. Thus, as discussed in the previous section, in 1986 the Commission reallocated for public safety use UHF TV Channel 16 (482-488 MHz). *Amendment of Parts 2, 73, and 90 of the Commission's Rules and Regulations to Allocate Additional Channels in the Band 470 - 512 MHz for Public Safety and Other Land Mobile Services*, 59 RR 2d 910 (1986). And in 1989 the Commission reallocated to public safety use in Los Angeles channels in the 470-512 MHz band that had been previously allocated for other land mobile services. *Flexible Allocation of Frequencies in the Domestic Public Land Mobile Service for Paging and Other Services*, 4 FCC Rcd 6415 (1989). Further, the Commission has frequently waived its rules on an *ad hoc* basis to make available to safety entities UHF channels allocated for non-public safety uses, including many such cases in the Los Angeles and southern California area. E.g., *City of Burbank, California*, 18 FCC Rcd 23770 (WTB 2003); *City of Pomona, California*, 15 FCC Rcd 15597 (WTB 2000); *City of Santa Monica, California*, 15 FCC Rcd 24938 (WTB 2000); *County of Sacramento, California*, 15 FCC Rcd 12600 (WTB 2000); and *County of San Mateo, California*, 14 FCC Rcd 19002 (WTB 1999).

The Commission is fully aware that “public safety entities have come to rely upon the 470-512 MHz band for their radio communications requirements.” *License Communications Services, Inc.*, 13 FCC Rcd 23781 (1998). The Commission explained:

The Los Angeles region is unique in this country in that it has been planning for some time to heavily implement mutual aid provisions with equipment operating in the 450-512 MHz band, in keeping with the Commission's channel 16 allocation. Because this equipment cannot operate in the 800 MHz band, effective mutual aid would be hindered if the Los Angeles area public safety institutions involved here could not obtain frequencies in the 450-512 MHz band. We take note of the efforts that have been made to use the 450-512 MHz frequencies efficiently and are satisfied that alternative frequencies in this part of the spectrum in Los Angeles are not available.

Flexible Allocation of Frequencies in the Domestic Public Land Mobile Service for Paging and Other Services, 4 FCC Rcd 6415 at 6419 (footnote omitted).

In one of Petitioners' meetings with a Commissioner, Enforcement Bureau staff questioned the value of UHF spectrum, suggesting that public safety entities are using predominantly 800 MHz spectrum and no longer have interest in the UHF band. But it is a matter of Commission record that the UHF band is extensively used and highly valued by public safety entities in the Los Angeles region. Appendix No. 3 hereto is a listing, based on data in the Commission's Uniform Licensing System (“ULS”), of active public safety licenses for conventional UHF (PW) and trunked UHF (YW) systems in Los Angeles and the surrounding Southern California area.²² There are some 3,193 such authorizations. Appendix No. 4 hereto is a listing of applications for new public safety UHF systems in the same area since early 2000. There have been over 430 such applications, approximately 130 of which have been filed since January of 2004 alone. And this reflects only those applications that have actually been filed with the Commission—there are dozens of additional UHF applications that have been tendered

²² The list represents active Public Safety authorizations for UHF (450-512 MHz) facilities in the California Counties of Los Angeles, Ventura, Santa Barbara, Kern, San Bernardino, Riverside, and Orange.

for frequency coordination but not actually submitted to the Commission yet due to lack of available UHF channels.²³

Petitioners have conferred with officials of the California Public-Safety Radio Association, Inc. ("CPRA"), the Los Angeles area chapter of the Additional UHF spectrum in the Los Angeles area would also help to alleviate the pressure created by the continuing delay in clearing broadcast use of that portion of the 700 MHz band earmarked for public safety use. See *Requirements for Digital TV Receiving Capability*, ET Docket No. 05-24, *Notice of Proposed Rulemaking* (FCC 05-17; released February 14, 2005); *The Region 5 (Southern California) 700 MHz Regional Committee Proposed Public Safety Plan*, WT Docket No. 02-378, *Order* (DA 04-1247; released April 30, 2004).

Finally, Petitioners have been in contact with the officials of the California Public-Safety Radio Association, Inc. ("CPRA"), the Los Angeles area chapter of the Association of Public-Safety Communications Officials, Int'l, Inc. ("APCO", as well as the APCO frequencies advisors for the Southern California area. CPRA and APCO report that: (a) there is a continuing shortage in the Los Angeles area of public safety mobile radio spectrum generally; (b) there is a great demand for additional UHF spectrum in the Southern California area, particularly by fire and police operations; (c) in many instances there is a preference for UHF spectrum because it facilitates interoperability with the existing systems throughout the area;²⁴ and (d) the demand is immediate, with many system deployments being delayed or abandoned due to lack of available

²³ This may be verified by consulting the Association of Public-Safety Communications Officials, Int'l, Inc. ("APCO"), the primary FCC-certified frequency coordinator for the public safety radio services. It is reasonable to assume, moreover, that many other potential applicants have not submitted to the frequency coordinator, knowing the exercise would be futile due to lack of spectrum and therefore a waste of frequency coordination fees.

²⁴ Police, fire, and rescue make extensive use of UHF spectrum in the Southern California area, yet there are many jurisdictions that do not have UHF (450-512 MHz) systems, operating in the lower VHF range. Lack of available UHF spectrum is a significant factor preventing these jurisdictions from using UHF and gaining interoperability.

UHF channels.²⁵ To a person, every knowledgeable person whom Petitioners have consulted has confirmed the existence of an immediate unmet demand among public safety entities in the Los Angeles area for additional UHF spectrum, particularly in the 470-512 MHz portion of that band. The proposal offered by Petitioners can go a long way toward satisfying some of that need.

To cite one specific example of the importance of UHF spectrum to Los Angeles public safety communications, Petitioners call the Commission's attention to the Interagency Communications Interoperability System ("ICIS," pronounced Isis like the Egyptian Goddess of fertility). ICIS is a relatively new cooperative effort by several independent cities in Los Angeles to share a common radio communications network. Its primary goal is to enable, facilitate, and enhance interoperability, i.e., to allow public safety personnel to seamlessly communicate with their counterparts in neighboring jurisdictions. Such a shared system will also allow officials to venture throughout the region still maintaining communications with their home base. Significantly, the planners have decided that the best place to locate this system spectrum-wise is in the UHF portion of the band. This is based not only on the propagation characteristics of the band, but also on the fact that most of the local jurisdictions already have a significant investment in UHF equipment for the police, fire, and rescue operations. Petitioners have consulted with ICIS officials and have verified that additional UHF spectrum is needed for the expansion and full implementation of the system. Added spectrum will increase the efficiency of the existing system and expand its capacity to enable additional jurisdictions to be served.²⁶

²⁵ Among the CPRA and/or APCO officials consulted by Petitioners were: Richard Granado (a CPRA Executive Committee delegate), Ron Wong (the President-Elect of the CPRA Executive Committee and an APCO frequency advisor for Southern California), Gary D. Gray (the APCO frequency advisor for Southern California who specializes in UHF matters), and Ron Haraseth (APCO's Director of Automated Frequency Coordination).

²⁶ The Commission has specifically acknowledged the importance (and insufficient quantity) of UHF spectrum for ICIS by waiving its rules to permit a public safety entity to use an otherwise unavailable UHF channel: "[W]e find it significant that access to the subject frequency pair would further Burbank's participation in the ICIS project. Based on the record before us, we believe such participation promotes interoperability between public safety communities in the Los Angeles Basin." *City of Burbank, California*, 18 FCC Rcd 23770 at ¶ 7 (WTB 2003).

There are many current public safety requirements for which (a) UHF spectrum is required, (b) 470-512 MHz spectrum would be ideal, and (c) 800 MHz spectrum would not suffice. Petitioners' proposed alternative sanction would respond to this clear and pressing public safety need and would, therefore, serve the public interest, convenience, and necessity.

IV. CONCLUSION

The immediate request is simply that the Commission direct negotiations looking toward a modified sanction package. Unless a satisfactory agreement can be reached in timely fashion, the existing sanction will remain in effect. Thus, the Commission has nothing to lose by granting this motion. But the Commission—and the public interest—have much to gain.

The proposed alternative secures for immediate public safety use a block of additional spectrum in what is perhaps the most highly congested and spectrum starved market in the country. By contrast, the current sanction revoking Petitioners' 800 MHz licenses does not increase public safety spectrum availability. Moreover, the Commission can do this without disturbing its judgment on the merits (i.e., the findings of violations) and while preserving the deterrent objective of its original sanction. The Commission would still be taking licenses away from Petitioners, but in a manner that will have mitigate an immediate demand for spectrum by public safety use in the Los Angeles area.

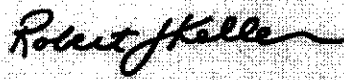
Improving the capabilities of public safety communications is always a priority, and it is even more so in the post 9/11 environment, given heavy reliance on public safety mobile radio communications by first responders. Clearly, the public interest, convenience, and necessity requires, at a minimum, attempting to negotiate such an alternative.

WHEREFORE, for all of the foregoing reasons, James A. Kay, Jr., and Marc Sobel d/b/a Air Wave Communications respectfully request that the Commission adopt an order:

- (a) establishing a panel charged with the responsibility for negotiating a proposed modification of the sanction in the above-captioned proceedings;
- (b) directing such panel to work toward a proposed modified sanction that will serve as a deterrent to future misconduct while also providing a significant benefit to public safety communications in the Los Angeles area; and
- (c) setting out such other substantive and procedural directions as the Commission may deem appropriate in the circumstances.

Respectfully submitted:

By:



Robert J. Keller
Counsel for James A. Kay, Jr., and
Marc Sobel d/b/a Air Wave Communications

Law Offices of Robert J. Keller, P.C.
PO Box 33428 – Farragut Station
Washington, D.C. 20033-0428
202-223-2100

By:

/s/ Aaron P. Shainis

Aaron P. Shainis
Counsel for James A. Kay, Jr.

Shainis and Peltzman, Chartered
1850 M Street, N.W. – Suite 240
Washington, D.C. 20036-5803
202-293-0011

Dated: August 3, 2005

Kay & Sobel 800 MHz Channels Subject to Revocation				
Ch #	Base Freq.	Call Sign	Service	Licensee
2	851.03750	WNJL306	YX	James A. Kay, Jr.
		WNPJ874	YX	James A. Kay, Jr.
5	851.11250	KNBT299	GX	MS Airwaves, Inc.
12	851.28750	WNXW549	GX	James A. Kay, Jr.
15	851.36250	WNSK552	YX	James A. Kay, Jr.
17	851.41250	WPAZ639	GX	James A. Kay, Jr.
		WNPY680	GX	MS Airwaves, Inc.
18	851.43750	WNPJ874	YX	James A. Kay, Jr.
20	851.48750	WPAP683	GX	James A. Kay, Jr.
21	851.51250	WNPJ874	YX	James A. Kay, Jr.
23	851.56250	WNWK982	GX	James A. Kay, Jr.
29	851.71250	WNJL306	YX	James A. Kay, Jr.
		WNMY402	YX	James A. Kay, Jr.
33	851.81250	WNWB332	GX	James A. Kay, Jr.
37	851.91250	WNMY773	GX	James A. Kay, Jr.
38	851.93750	WNXQ353	GX	James A. Kay, Jr.
39	851.96250	WNWQ651	GX	James A. Kay, Jr.
44	852.08750	WNXB280	GX	James A. Kay, Jr.
45	852.11250	WNZY505	GX	James A. Kay, Jr.
		WNJA910	YX	James A. Kay, Jr.
46	852.13750	WNYR424	GX	MS Airwaves, Inc.
47	852.16250	WNXS450	GX	James A. Kay, Jr.
		WNKV762	YX	James A. Kay, Jr.
48	852.18750	WNWB268	GX	James A. Kay, Jr.
51	852.26250	WNXL471	GX	MS Airwaves, Inc.
		WPFF529	GX	MS Airwaves, Inc.
57	852.41250	WPAD685	GX	MS Airwaves, Inc.
59	852.46250	WNMT755	GX	James A. Kay, Jr.
		WNJA910	YX	James A. Kay, Jr.
61	852.51250	KRU576	GX	MS Airwaves, Inc.
65	852.61250	WNMY402	YX	James A. Kay, Jr.
		WNXW327	YX	James A. Kay, Jr.
68	852.68750	WNYR747	GX	James A. Kay, Jr.
72	852.78750	WNXQ911	GX	James A. Kay, Jr.
79	852.96250	WNYQ437	GX	James A. Kay, Jr.
		WNKV762	YX	James A. Kay, Jr.
80	852.98750	WNVW779	GX	James A. Kay, Jr.
83	853.06250	WNJL306	YX	James A. Kay, Jr.
		WNPJ874	YX	James A. Kay, Jr.
		WNXW327	YX	James A. Kay, Jr.
86	853.13750	WPCZ354	GX	MS Airwaves, Inc.
		WPFH460	GX	MS Airwaves, Inc.
88	853.18750	WNJA910	YX	James A. Kay, Jr.
91	853.26250	WNJL306	YX	James A. Kay, Jr.
92	853.28750	WNJL306	YX	James A. Kay, Jr.
98	853.43750	WNXG372	GX	James A. Kay, Jr.

Kay & Sobel 800 MHz Channels Subject to Revocation				
Ch #	Base Freq.	Call Sign	Service	Licensee
99	853.46250	WNWN703	GX	James A. Kay, Jr.
103	853.56250	WNVL794	GX	James A. Kay, Jr.
		WNJA910	YX	James A. Kay, Jr.
104	853.58750	WNJA910	YX	James A. Kay, Jr.
		WPCG780	GX	MS Airwaves, Inc.
106	853.63750	WNIZ676	GX	James A. Kay, Jr.
110	853.73750	WNMY402	YX	James A. Kay, Jr.
117	853.91250	WNXW280	GX	James A. Kay, Jr.
119	853.96250	WPBZ518	GX	James A. Kay, Jr.
121	854.01250	WNMY402	YX	James A. Kay, Jr.
		WNXW327	YX	James A. Kay, Jr.
122	854.03750	WNMY402	YX	James A. Kay, Jr.
		WNWB334	GX	MS Airwaves, Inc.
		WPCA891	GX	MS Airwaves, Inc.
125	854.11250	WNJL306	YX	James A. Kay, Jr.
128	854.18750	WNJL306	YX	James A. Kay, Jr.
		WNMY402	YX	James A. Kay, Jr.
129	854.21250	WNJL306	YX	James A. Kay, Jr.
		WNMY402	YX	James A. Kay, Jr.
130	854.23750	WNSK552	YX	James A. Kay, Jr.
132	854.28750	WNMY402	YX	James A. Kay, Jr.
		WNXW327	YX	James A. Kay, Jr.
136	854.38750	WNSK552	YX	James A. Kay, Jr.
		WPDB603	GX	MS Airwaves, Inc.
140	854.48750	WNXS753	GX	James A. Kay, Jr.
		WNJA910	YX	James A. Kay, Jr.
146	854.63750	WPBW517	GX	James A. Kay, Jr.
149	854.71250	WNZZ731	GX	James A. Kay, Jr.
		WNPJ874	YX	James A. Kay, Jr.
151	854.76250	WNJL306	YX	James A. Kay, Jr.
		WNPJ874	YX	James A. Kay, Jr.
152	854.78750	WNMY402	YX	James A. Kay, Jr.
		WNXW327	YX	James A. Kay, Jr.
156	854.88750	WNJA910	YX	James A. Kay, Jr.
158	854.93750	WNKV762	YX	James A. Kay, Jr.
		WNPJ874	YX	James A. Kay, Jr.
163	855.06250	WNJA910	YX	James A. Kay, Jr.
164	855.08750	WNMY402	YX	James A. Kay, Jr.
		WNXW327	YX	James A. Kay, Jr.
171	855.26250	WNJA910	YX	James A. Kay, Jr.
172	855.28750	WNJA910	YX	James A. Kay, Jr.
181	855.51250	WNMY402	YX	James A. Kay, Jr.
		WNXW327	YX	James A. Kay, Jr.
182	855.53750	WNJA910	YX	James A. Kay, Jr.
186	855.63750	WNJA910	YX	James A. Kay, Jr.
188	855.68750	WNJA910	YX	James A. Kay, Jr.